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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**

9 REBEKAH CHARLESTON; ANGELA
10 DELGADO-WILLIAMS; and LEAH
ALBRIGHT-BYRD;

11 Plaintiffs,

12 vs.

13 STATE OF NEVADA; STEVE SISOLAK,
14 in his capacity as Governor of the State of
Nevada, and the
15 LEGISLATURE OF THE STATE OF
NEVADA;

16 Defendants.

Case No.: 3:19-cv-00107-MMD-WGC

**PLAINTIFFS' OPPOSITION TO
DEFENDANTS STATE OF NEVADA AND
GOVERNOR STEVE SISOLAK'S MOTION
TO DISMISS FIRST AMENDED
COMPLAINT
(ECF No. 22)**

17
18 Plaintiffs Rebekah Charleston, Angela Delgado-Williams, and Leah Albright-Byrd
19 (hereinafter collectively referred to as "Plaintiffs"), by and through their attorneys, JASON D.
20 GUINASSO, ESQ., and the law offices of HUTCHISON & STEFFEN, PLLC, hereby oppose
21 the April 3, 2019 *Motion to Dismiss* (ECF No. 22) filed by Defendants State of Nevada and
22 Governor Steve Sisolak (hereinafter collectively referred to as "Nevada and Sisolak").
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This Court should not dismiss Plaintiffs' First Amended Complaint for Declaratory and
4 Injunctive Relief (ECF No.12). Plaintiffs have plead sufficient facts and related claims for relief
5 to invoke the jurisdiction of this Court. In this regard, Plaintiffs have plead sufficient facts and
6 claims for relief to show that they have suffered injuries that are both "concrete and
7 particularized," and "actual or imminent, not conjectural or hypothetical." Moreover, Plaintiffs
8 have plead sufficient facts and claims for relief in their First Amended Complaint to show there
9 is a causal link between the injury and the conduct of Defendants. To survive a dismissal motion,
10 a complaint need only satisfy the minimal notice pleading requirements of Rule 8(a)(2)—a short
11 and plain statement of the claim. *Porter v. Jones*, 319 F.3d 483, 494 (9th Cir. 2003). On motion
12 to dismiss for failure to state a claim, court must presume all factual allegations of complaint to
13 be true and draw all reasonable inferences in favor of nonmoving party. *Usher v. City of Los*
14 *Angeles*, 828 F.2d 556 (9th Cir. 1987). For purposes of motion to dismiss, material allegations
15 of complaint are taken as admitted and complaint is to be liberally construed in favor of plaintiff.
16 *Jenkins v. McKeithen*, 395 U.S. 411, 89 S. Ct. 1843, 23 L. Ed. 2d 404 (1969); *Keniston v.*
17 *Roberts*, 717 F.2d 1295 (9th Cir.1983).

18 This lawsuit is much more than a "policy debate about the merits of legalized
19 prostitution..." as the State of Nevada and the Governor have callously suggested in their Motion
20 to Dismiss. This lawsuit is about redressing specific and real harms inflicted upon the Plaintiffs
21 and thousands of others similarly situated by the State of Nevada and its political subdivisions.
22 In this regard, this lawsuit specifically seeks a court order declaring Nev. Rev. Stat. 201.354(1),
23 Nev. Rev. Stat. 244.345(8), and the related ordinances of Elko, Lander, Lyon, Mineral, Nye,
24 Storey, and White Pine Counties, licensing brothels unconstitutional, null, and void as preempted
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1 by federal law; and, a preliminary and permanent injunction be issued prohibiting the State of
2 Nevada and all of its political subdivisions from continuing to implement, enforce, or put into
3 force and effect Nev. Rev. Stat. 201.354(1) and Nev. Rev. Stat. 244.345(8). Additionally, this
4 lawsuit also requests an order for the State to create and fund a “Nevada Sex Trade Exit Fund”
5 to provide mental health services, rent assistance, job training, scholarships, and funding for
6 medical treatments for women prostituted through Nevada’s legal brothels. This remedy is
7 appropriate and within the Court’s authority to redress injuries caused by State laws that cause
8 harm to Plaintiffs and countless others similarly situated to plaintiffs.

9 Plaintiffs, Ms. Charleston, Ms. Delgado-Williams and Ms. Albright-Byrd, have been
10 irreparably harmed. By disregarding federal law, the acts of Defendants State of Nevada, et al.,
11 including, but not limited to, authorizing a legalized commercial prostitution market to operate
12 in the State, have created the danger that has led to the irreparable harm suffered by the Plaintiffs
13 and other victims of sex trafficking by exposing them to the dangers of sex trafficking and
14 prostitution (i.e., serial rape, sexual servitude, sexual and physical assault, psychological trauma,
15 bodily injury, and risk of sexually transmitted diseases) without protections from the inherent
16 dangers federal law was enacted to prevent. Further, Plaintiffs submit that, because the brothel
17 industry in Nevada openly and notoriously persuades, induces, entices, and coerces individuals
18 to travel in interstate commerce to buy people for acts of prostitution, Nev. Rev. Stat. 201.354(1)
19 and Nev. Rev. Stat. 244.345(8) cannot exist simultaneously with 18 U.S.C. § 2422(a) and 22
20 U.S.C. § 7101-7114 and thereby is preempted and in violation of the Supremacy Clause of the
21 U.S. Constitution.

22 Sex trafficking, as defined by the Trafficking Victims Protection Act, includes all
23 pimping and sex buying. The State’s creation of an intrastate commercialized prostitution
24 market exerts a substantial economic effect, namely, the creation of an interstate and foreign
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1 prostitution market; therefore, Nevada's legal brothels, operating under Nev. Rev. Stat.
2 201.354(1) and Nev. Rev. Stat. 244.345(8), are in violation of and direct conflict with 42 U.S.C.
3 § 1983; the federal Mann Act, codified at 18 U.S.C. §§ 2421–2424 (Mann Act); the Victims of
4 Trafficking and Violence Protection Act of 2000, codified at 22 U.S.C. §§ 7101–7114 (TVPA).

5 Only 7 counties in the United States have legal prostitution in licensed brothels. All of
6 those counties are located in the State of Nevada. These counties have populations of less than
7 700,000, but Nevada's legal brothels are estimated to generate more than seventy-five million
8 dollars (\$75,000,000) per year, while at the same time fueling Nevada's illegal prostitution
9 market, which in Las Vegas is estimated to gross over five billion dollars (\$5,000,000,000) per
10 year.¹ Since the legalization of prostitution is directly linked to increased sex trafficking, the
11 most vulnerable people in the brothel industry are at increased risk for harm. Nevada's illegal
12 sex trade is estimated to be twice as large as other states.² At least five thousand sixteen (5,016)
13 individuals are sold for sex in an average month in Nevada.³ The State of Nevada has not only
14 failed to enact, uphold, and conform to federal law with respect to prostitution and sex
15 trafficking, but it has also allowed Nevadans and those sexually trafficked to Nevada to be
16 exploited and to become victims to this exploitative industry, thus fostering the existence of a
17 supply chain of organized sexual exploitation.

20 ¹ See Exhibit 1 at 0001-0006 (Ronald B. Flowers, PROSTITUTION IN THE DIGITAL AGE: SELLING
SEX FROM THE SUITE TO THE STREET? at pg. 42-46 (Praeger 2011)).

21 ² Melissa Farley, PROSTITUTION AND TRAFFICKING IN NEVADA: MAKING THE CONNECTIONS
(Prostitution Research & Education, 2007).

22 ³ See Exhibit 2 at 0013, ¶ 2 (Crysta N. Price, Terry D. Clark, & Julie Faller, Nevada's Online
23 Commercial Sex Market, HUMAN TRAFFICKING INITIATIVE, CREIGHTON
UNIVERSITY (2017), [https://awakenreno.org/wp-](https://awakenreno.org/wp-content/uploads/2018/05/FINAL_Nevada_March2018.pdf)
content/uploads/2018/05/FINAL_Nevada_March2018.pdf).

1 Plaintiffs submit in their First Amended Complaint that the foregoing circumstances are
2 a direct result of Nevada's legal system that must induce, persuade, entice, and coerce individuals
3 to enter into interstate and foreign commerce to engage in the purchase of human beings for sex
4 in order to remain economically viable. Without the inflow of individuals into interstate and
5 foreign commerce to engage in prostitution, the legal system would collapse. Moreover,
6 legalized prostitution has exacerbated the victimization of women within the illicit sex trade; the
7 data shows that prostituted persons in the illegal trade around licensed brothels are at a similar
8 risk of having been trafficked as those in areas without legal brothels.⁴ The majority of men who
9 buy women for sex come from out-of-state. Likewise, the women bought, sold, and trafficked
10 to Nevada come from other states and countries outside the State of Nevada. These men and
11 women enter into interstate and foreign commerce and come to Nevada to engage in prostitution
12 as a result of the unfettered advertising and marketing of Nevada's legal brothels outside the
13 State of Nevada through hundreds of websites, social media accounts, and other mass media
14 used to persuade, induce, and entice men and women to come to Nevada to engage in prostitution
15 in direct violation of federal law.⁵ Consequently, thousands of women, just like the Plaintiffs in
16 this case, are illegally trafficked to the State of Nevada to satisfy the demand of tens of thousands
17 of sex buyers who come to Nevada expecting and demanding to purchase and sexually consume
18 these women. The legal system Nevada has created is in conflict with the federal laws
19 specifically enacted to stop trafficking and prostitution nationally and internationally.

20 In summary, Plaintiffs have asserted in their First Amended Complaint that, by
21 disregarding federal law, the acts of Defendants in authorizing and perpetuating legalized
22 commercial prostitution in the state, have directly and indirectly caused irreparable harm to
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24 ⁴ See Exhibit 2 (0029, ¶4).

⁵ See Exhibit 8 at 0172-0279 (EXAMPLES OF ADVERTISING AND MARKETING OF BROTHELS).

1 Plaintiffs and other victims of sex trafficking by exposing them to the dangers of sex trafficking
2 and prostitution without protections from the inherent dangers federal law was enacted to
3 prevent. Further, Plaintiffs submit that, because the brothel industry in Nevada openly and
4 notoriously persuades, induces, entices, and coerces individuals to travel in interstate commerce
5 to commit acts of prostitution, Nev. Rev. Stat. 201.354(1) and Nev. Rev. Stat. 244.345(8) cannot
6 exist simultaneously with 18 U.S.C. § 2422(a) and 22 U.S.C. § 7101-7114 and thereby is
7 preempted and in violation of the Supremacy Clause of the U.S. Constitution. In accordance
8 with the foregoing, Plaintiffs respectfully request that this Court give Plaintiffs an opportunity
9 to prove up their claims for relief and deny Defendants' *Motion to Dismiss* (ECF No. 22).

10 **II. PLAINTIFFS HAVE SUFFICIENTLY PLEAD CLAIMS FOR RELIEF THAT**
11 **ARE JUSTICIABLE.**

12 Under Rule 12(b)(1) of the Federal Rules of Civil Procedure, a defendant may move to
13 dismiss a complaint for lack of subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1).
14 "Jurisdictional dismissals in cases premised on federal-question jurisdiction are exceptional"
15 *Sun Valley Gasoline, Inc. v. Ernst Enters.*, 711 F.2d 138, 140 (9th Cir. 1983). "A Rule 12(b)(1)
16 jurisdictional attack may be facial or factual." *Safe Air for Everyone v. Meyer*, 373 F.3d 1035,
17 1039 (9th Cir. 2004) (*citing* *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000)). A facial attack
18 is based on the challenger's assertion that allegations in the complaint are "insufficient on their
19 face to invoke federal jurisdiction." *Id.* A factual attack disputes the validity of allegations that,
if true, would invoke federal jurisdiction. *Id.*

20 **A. PLAINTIFFS HAVE STANDING TO BRING THIS LAWSUIT.**

21 Standing is a threshold matter central to the court's subject matter jurisdiction. *Bates v.*
22 *United Parcel Serv., Inc.*, 511 F.3d 974, 985 (9th Cir.2007); *see also Summers v. Earth Island*
23 *Inst.*, 555 U.S. 488, 129 S.Ct. 1142, 1148, 173 L.Ed.2d 1 (2009) (Article III limits judicial power
24 to "cases" and "controversies"). Constitutional standing has three elements. To establish

1 standing, a plaintiff must show that he or she has suffered or is threatened with an injury that is
2 both “concrete and particularized,” and “actual or imminent, not conjectural or hypothetical;”
3 that there is a causal link between the injury and the conduct of which the plaintiff complains—
4 that is, that the injury is “fairly traceable” to the challenged conduct; and that the injury is “likely”
5 to be “redressed by a favorable decision.” *Id.*, 511 F.3d at 985 (*quoting Lujan v. Defenders of*
6 *Wildlife*, 504 U.S. 555, 560–61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992) (quotations omitted));
7 *see also Skaff v. Meridien North America Beverly Hills, LLC*, 506 F.3d 832, 837 (9th Cir.2007).
8 *Moeller v. Taco Bell Corp.*, 816 F.Supp.2d 831, 849 (N.D.Cal., 2011).

9 The requirement of justiciability arises from Article III of the Constitution, which limits
10 the judicial power of federal courts to cases and controversies. It has long been the rule that no
11 federal court has jurisdiction to declare any statute void for repugnance to the Constitution except
12 as it is called upon to adjudge the legal rights of litigants in actual controversies. *Associated*
13 *Students for University of California at Riverside v. Attorney General of U. S.*, 368 F.Supp. 11,
14 16–17 (C.D.Cal., 1973) (*citing Golden v. Zwickler*, 394 U.S. 103, 110, 89 S.Ct. 956, 22 L.Ed.2d
15 113 (1969)).

16 Here, Plaintiffs have plead sufficient facts and related claims for relief to invoke the
17 jurisdiction of this Court. In this regard, Plaintiffs have plead sufficient facts and claims for
18 relief to show that they have suffered injuries that are both “concrete and particularized,” and
19 “actual or imminent, not conjectural or hypothetical.” Moreover, Plaintiffs have plead sufficient
20 facts and claims for relief to show there is a causal link between the injury and the conduct of
21 which the plaintiffs complain. All of the injuries claimed by the Plaintiffs are “fairly traceable”
22 to the State of Nevada’s conduct and, if the Court were to rule in Plaintiffs favor at the conclusion
23 of litigation in this contested case, the injuries Plaintiffs and those similarly situated have
24 suffered are likely to be redressed by a favorable decision. However, at this stage of the

1 litigation, the complaint does not have to prove that Plaintiffs are entitled to the relief they are
2 requesting in the complaint, rather the complaint must plead sufficient facts and claims to invoke
3 federal jurisdiction. Plaintiffs have plead sufficient facts and claims to invoke the jurisdiction of
4 this Court to redress real and continued harms to the Plaintiffs and those similarly situated.

5 **B. A “CASE OF ACTUAL CONTROVERSY” HAS BEEN PRESENTED**
6 **BY PLAINTIFFS FOR WHICH THIS COURT CAN PROVIDE**
7 **DECLARATORY RELIEF.**

8 Declaratory relief may be sought as means to challenge the constitutionality of a federal
9 law or state statute or local ordinance. *Doe v. Gallinot* (9th Cir. 1981) 657 F.2d 1017. The
10 declaratory remedy is committed to the sound discretion of the court. *Mechling Barge Lines v.*
11 *United States*, 368 U.S. 324, 331, 82 S.Ct. 337, 341, 7 L.Ed.2d 317, 322 (1961); *Public Service*
12 *Commission v. Wycoff Co.*, 344 U.S. 237, 241, 73 S.Ct. 236, 239, 97 L.Ed. 291, 294-95 (1952);
13 *Brillhart v. Excess Insurance Co.*, 316 U.S. 491, 494-98, 62 S.Ct. 1173, 1175-77, 86 L.Ed. 1620,
14 1625-27 (1942). *Doe v. Gallinot*, 657 F.2d 1017, 1024–25 (C.A.Cal., 1981). The Declaratory
15 Judgment Act provides that, “[i]n a case of actual controversy within its jurisdiction ... any court
16 of the United States ... may declare the rights and other legal relations of any interested party
17 seeking such declaration, whether or not further relief is or could be sought.” *MedImmune, Inc.*
18 *v. Genentech, Inc.*, 127 S.Ct. 764, 770, 549 U.S. 118, 126 (U.S.,2007).

19 The phrase “case of actual controversy” in the Act refers to the type of “Cases” and
20 “Controversies” that are justiciable under Article III. *Id.* at 240, 57 S.Ct. 461. (Id.) The standards
21 for determining whether a particular declaratory-judgment action satisfies the case-or-
22 controversy requirement—*i.e.*, “whether the facts alleged, under all the circumstances, show that
23 there is a substantial controversy, between parties having adverse legal interests, of sufficient
24 immediacy and reality to warrant” relief. *MedImmune, Inc. v. Genentech, Inc.*, 127 S.Ct. 764,
766, 549 U.S. 118, 118 (U.S.,2007) (*quoting, Maryland Casualty Co. v. Pacific Coal & Oil*

1 Co., 312 U.S. 270, 273, 61 S.Ct. 510, 85 L.Ed. 826). Article III of the Constitution limits the
2 judicial power to the adjudication of “Cases” or “Controversies.” *MedImmune, Inc. v.*
3 *Genentech, Inc.*, 127 S.Ct. 764, 777, 549 U.S. 118, 137 (U.S., 2007).

4 In the context of declaratory judgment actions, federal courts have provided a uniform
5 framework for assessing whether an Article III case or controversy exists. In the constitutional
6 sense, a “Controversy” is “distinguished from a difference or dispute of a hypothetical or abstract
7 character; from one that is academic or moot.” *Ibid.* (citing *United States v. Alaska S.S. Co.*, 253
8 U.S. 113, 116, 40 S.Ct. 448, 64 L.Ed. 808 (1920)). “The controversy must be definite and
9 concrete, touching the legal relations of parties having adverse legal interests.” 300 U.S., at 240–
10 241, 57 S.Ct. 461. Finally, “[i]t must be a real and substantial controversy ..., as distinguished
11 from an opinion advising what the law would be upon a hypothetical state of facts.” *Id.*, at 241,
12 57 S.Ct. 461. *MedImmune, Inc. v. Genentech, Inc.*, 127 S.Ct. 764, 777, 549 U.S. 118, 138
13 (U.S., 2007).

14 In this case, Plaintiffs have sufficiently plead facts that are not hypothetical, and further
15 have plead sufficient facts to establish that an actual controversy exists; therefore, Plaintiffs are
16 entitled to invoke this Court’s jurisdiction and have this Court consider their request for
17 declaratory relief. Specifically, the Plaintiffs have asserted in their First Amended Complaint
18 that the unconstitutional actions of Defendants State of Nevada, et al., including, but not limited
19 to, authorizing a legalized commercial sex trafficking and prostitution market to operate in the
20 State, has created a legal industry that has exposed Plaintiffs and other similarly situated to
21 Plaintiffs to the dangers and resulting injuries of sex trafficking and prostitution (i.e., serial rape,
22 sexual servitude, sexual and physical assault, psychological trauma, bodily injury, and risk of
23 sexually transmitted diseases) without regard to the protections that the federal law was enacted
24 to prevent. Further, Plaintiffs submit that, because the brothel industry causes individuals to

1 travel in interstate and foreign commerce to buy people for acts of prostitution, Nev. Rev. Stat.
2 201.354(1) and Nev. Rev. Stat. 244.345(8) cannot exist simultaneously with 18 U.S.C. § 2422(a)
3 and 22 U.S.C. § 7101-7114 and thereby is preempted and in violation of the Supremacy Clause
4 of the U.S. Constitution. Therefore, Plaintiffs have asked this Court for an order declaring Nev.
5 Rev. Stat. 201.354(1), Nev. Rev. Stat. 244.345(8), and the ordinances of Elko, Lander, Lyon,
6 Mineral, Nye, Storey, and White Pine Counties, licensing brothels unconstitutional, null, and
7 void as preempted by federal law.

8 **C. PLAINTIFFS HAVE ADEQUATELY PLEAD FOR INJUNCTIVE**
9 **RELIEF TO PUT A STOP TO THE SUBSTANTIAL, REPETITIVE,**
10 **AND CONTINUING HARMS SUSTAINED BY THE PLAINTIFFS**
11 **AND OTHERS SIMILARLY SITUATED TO PLAINTIFFS.**

12 The standing formulation for a plaintiff seeking prospective injunctive relief is simply
13 one implementation of *Lujan's* requirements. The plaintiff must demonstrate that he has suffered
14 or is threatened with a “concrete and particularized” legal harm, *Lujan*, 504 U.S. at 560, 112
15 S.Ct. 2130, coupled with “a sufficient likelihood that he will again be wronged in a similar way.”
16 *City of Los Angeles v. Lyons*, 461 U.S. 95, 111, 103 S.Ct. 1660, 75 L.Ed.2d 675 (1983). As to
17 the second inquiry, he must establish a “real and immediate threat of repeated injury.” *O’Shea*
18 *v. Littleton*, 414 U.S. 488, 496, 94 S.Ct. 669, 38 L.Ed.2d 674 (1974). “[P]ast wrongs do not in
19 themselves amount to [a] real and immediate threat of injury necessary to make out a case or
20 controversy.” *Lyons*, 461 U.S. at 103, 103 S.Ct. 1660.

21 However, “past wrongs are evidence bearing on whether there is a real and immediate
22 threat of repeated injury.” *O’Shea*, 414 U.S. at 496, 94 S.Ct. 669. In addition, the claimed threat
23 of injury must be likely to be redressed by the prospective injunctive relief. *Graham v. Fed.*
24 *Emergency Mgmt. Agency*, 149 F.3d 997, 1003 (9th Cir.1998) (recognizing that “[p]laintiffs need
not demonstrate that there is a ‘guarantee’ that their injuries will be redressed by a favorable
decision” but “only that a favorable decision is *likely* to redress” their injuries) *Bates v. United*

1 *Parcel Service, Inc.*, 511 F.3d 974, 985–86 (C.A.9 (Cal.),2007). “A plaintiff who challenges a
2 statute must demonstrate a realistic danger of sustaining a direct injury as a result of the statute’s
3 operation or enforcement.” *Babbitt v. United Farm Workers Nat’l Union*, 442 U.S. 289, 298, 99
4 S.Ct. 2301, 60 L.Ed.2d 895 (1979) (*citing* *O’Shea v. Littleton*, 414 U.S. 488, 494, 94 S.Ct. 669,
5 38 L.Ed.2d 674 (1974)).

6 The Ninth Circuit has repeatedly held that “the deprivation of constitutional rights
7 unquestionably constitutes irreparable injury” *County of Santa Clara v. Trump*, 250 F.Supp.3d
8 497, 537 (N.D.Cal., 2017) (*quoting* *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir.
9 2012); *Rodriguez v. Robbins*, 715 F.3d 1127, 1144–45 (9th Cir. 2013). “[E]ven where the
10 constitutional injury is structural, “the constitutional violation alone, coupled with the damages
11 incurred, can suffice to show irreparable harm.” *County of Santa Clara v. Trump*, 250 F.Supp.3d
12 497, 538 (N.D.Cal., 2017)(*quoting* *American Trucking*, 559 F.3d at 1058).

13 By disregarding federal law, the acts of Defendants constitute a clear violation of the
14 Supremacy Clause of the Constitution, including, but not limited to, authorizing a legalized
15 interstate and foreign commercial prostitution and sex trafficking market to operate in the State
16 in violation of clear and unambiguous federal laws prohibiting interstate and foreign prostitution
17 and sex trafficking. Further, the State of Nevada laws permitting prostitution in counties with
18 populations of less than 700,000 people has created the specific dangers the federal laws were
19 enacted to prevent which has directly resulted in irreparable harm to Plaintiffs and other similarly
20 situated victims of sex trafficking. Unless and until this Court issues a permanent injunction
21 prohibiting the State of Nevada and all of its political subdivisions from implementing,
22 enforcing, or putting into force and effect Nev. Rev. Stat. 201.354(1) and Nev. Rev. Stat.
23 244.345(8) and the resulting county ordinances, Plaintiffs and others similarly situated to
24 Plaintiffs will continue to be irreparably harmed. Moreover, an injunction will not only cut off

1 the harms caused to Plaintiffs but will prevent other similarly situated plaintiffs from suffering
2 the same harms.

3 In their Motion to Dismiss, the State of Nevada and Governor Sisolak have argued that
4 Plaintiffs' First Amended Complaint should be dismissed because the Plaintiffs' allegations do
5 not "meet the requirement that they are realistically threatened with a repetition of the conduct"
6 that is subject to this action. (ECF No 22 at pg. 8 ¶ 1). Essentially, Defendants appear to be
7 arguing that the Plaintiff's case is moot despite the fact that the harm complained about is
8 substantial, repetitive, and continuing.

9 In general, a case becomes moot "when the issues presented are no longer "live" or the
10 parties lack a legally cognizable interest in the outcome.'" *Murphy v. Hunt*, 455 U.S. 478, 481,
11 102 S. Ct. 1181, 1183, 71 L. Ed. 2d 353 (1982) (quoting *United States Parole Comm'n v.*
12 *Geraghty*, 445 U.S. 388, 396, 100 S.Ct. 1202, 1208, 63 L.Ed.2d 479 (1980)). The Court has
13 recognized an exception to this rule when a case is "capable of repetition, but evades review."
14 *Sosna v. Iowa*, 419 U.S. 393, 95 S.Ct. 553, 42 L.Ed.2d 532 (1975) decided that in the absence of
15 a class action, the "capable of repetition, yet evading review" doctrine was limited to the situation
16 where two elements combined: (1) the challenged action was in its duration too short to be fully
17 litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the
18 same complaining party would be subjected to the same action again. *Weinstein v. Bradford*, 423
19 U.S. 147, 149, 96 S. Ct. 347, 349, 46 L. Ed. 2d 350 (1975).

20 Based on the facts and allegations presented to this Court in their First Amended
21 Complaint, Plaintiffs are victims of sex trafficking under 22 U.S.C. § 7102(9)(A) and under the
22 alternate definition provided in 22 U.S.C. § 7102(9)(B). Plaintiffs were induced to travel through
23 interstate commerce to the State of Nevada to engage in commercial sex through fraud, which
24 the traffickers used to obtain their cooperation in traveling throughout the United States. The

1 traffickers used force and coercion in the form of physical abuse, intimidation, and psychological
2 abuse to directly induce Plaintiffs to travel into interstate commerce to engage in commercial
3 sex in Nevada brothels. Additionally, Plaintiffs are victims of involuntary servitude as defined
4 by Nev. Rev. Stat. 200.463. But for the State of Nevada's laws permitting legal prostitution,
5 Plaintiffs would not have been trafficked through interstate commerce into the State to engage
6 in commercialized sex in Nevada brothels.

7 It is difficult, if not impossible, for victims of sex trafficking to avail themselves of the
8 protections of federal law, the Constitution, and the federal court while they are being trafficked
9 because victims of sex trafficking, involuntary sexual servitude, and trafficking in persons are
10 inherently prevented from access to the legal and civil remedies during their period of
11 victimization. Even after escaping the control of their trafficker, survivors of sex trafficking can
12 be among the most difficult crime victims to assist. Often victims resist help, refusing to see
13 themselves as victims and returning to their traffickers.⁶ Further, the physical and psychological
14 effects of sex trafficking and prostitution, endure long after victims are freed from their context
15 of sexual exploitation. Sexual violations are inflicted in and on the body, the place where one's
16 consciousness resides. Thus, a survivor can never entirely escape or be free from the setting
17 where the violations took place. Plaintiffs and similarly situated individuals experience a
18 "reasonable expectation" and "demonstrated possibility" that they would be subjected to
19 revictimization. In this case, "the challenged governmental activity ... is not contingent, has not
20 evaporated or disappeared, and, by its continuing and brooding presence, casts what may well
21 be a substantial adverse effect on the interests of the petitioning parties." *Super Tire Eng'g Co.*
22 *v. McCorkle*, 416 U.S. 115, 122, 94 S. Ct. 1694, 1698, 40 L. Ed. 2d 1 (1974).

23 ⁶ [https://www.reuters.com/article/trafficking-victims-usa/sex-trafficking-victims-may-push-](https://www.reuters.com/article/trafficking-victims-usa/sex-trafficking-victims-may-push-rescue-away-u-s-experts-say-idUSL1N1972LK)
24 [rescue-away-u-s-experts-say-idUSL1N1972LK](https://www.reuters.com/article/trafficking-victims-usa/sex-trafficking-victims-may-push-rescue-away-u-s-experts-say-idUSL1N1972LK)

1 Nevada's legal system is the direct and proximate cause of the injuries Plaintiffs
2 sustained as a result of being trafficked to Nevada. If Nevada did not permit legal prostitution,
3 Plaintiffs would not have been trafficked to Nevada. The legal system commodifies women and
4 creates an expectation and demand that women can be bought and sold in Nevada legally. Legal
5 prostitution and sex trafficking are inextricably linked in Nevada as elsewhere in the world where
6 prostitution is legal. Sex trafficking happens when and where there is a demand for prostitution.⁷
7 On average, in jurisdictions with legal prostitution, there is a statistically significantly larger
8 reported incidence of illegal sex trafficking. As one expert put it, "wherever prostitution is
9 legalized, trafficking to sex industry marketplaces in that region increases."⁸ The U.S. State
10 Department's official government position is that, "prostitution is inherently harmful and
11 dehumanizing and fuels trafficking in persons."⁹ The links between legal and illegal prostitution
12 in Nevada and the profound harms these cause all women are seen in other countries where legal
13 prostitution exists such as the Netherlands and Australia. Wherever legal prostitution exists, sex
14 trafficking increases.¹⁰

16 ⁷ See Exhibit 3 at 0030-0078 (Seo-Young Cho, Axel Dreher, & Eric Neumeyer, Does Legalized
17 Prostitution Increase Human Trafficking?, WORLD DEVELOPMENT, at pg. 41, 67-82
(2012), [https://eprints.lse.ac.uk/45198/1/Neumayer](https://eprints.lse.ac.uk/45198/1/Neumayer_Legalized_Prostitution_Increase_2012.pdf)
18 [_Legalized_Prostitution_Increase_2012.pdf](https://eprints.lse.ac.uk/45198/1/Neumayer_Legalized_Prostitution_Increase_2012.pdf)); See also Exhibit 2 at 0007-0029; See also Exhibit
19 4 at 0079-0086 (Melissa Farley, Trafficking for Prostitution: Making the Connections,
20 AMERICAN PSYCHOLOGICAL ASSOCIATION (2007); See also Exhibit 5 at 0087-0116
(Shapiro & Hughes, Decriminalized Prostitution: Impunity for Violence and Exploitation,
21 UNIVERSITY OF RHODE ISLAND (2017). See also Exhibit 6 at 0117-0169 (Research Report, Who
Buys Sex? Understanding and Disrupting Illicit Market Demand, DEMAND ABOLITION (Nov.,
2018), <https://www.demandabolition.org/wp-content/uploads/2019/02/Who-Buys-Sex.pdf>

22 ⁸ Cho, *supra* at pg. 3 ¶2.

23 ⁹ See Exhibit 7 at 0170-0171 (U.S. DEPARTMENT OF STATE, TRAFFICKING IN PERSONS
24 REPORT at pg. 27 (2007)); Case studies published by researchers Niklas Jakobsson and Andreas
Kotsadam support a causal link between criminalizing buying sex and reduced human trafficking.
Jakobsson and Kotsadam found that trafficking of persons for commercial sexual exploitation is least
prevalent in countries where prostitution is illegal and most prevalent in countries where prostitution
is legalized.

1 Nevada’s argument in support of its Motion to Dismiss that its legal system is “agnostic”
2 is not true. For example, Nevada local governments with populations of less than 700,000, which
3 are political subdivisions of the State and who can only exercise specific enumerated powers
4 expressly granted by the State, receive hundreds of thousands of dollars in brothel taxes and fees.
5 Local governments are only permitted to enact promulgate and enforce ordinances within the
6 authority granted to them by the State. *See City of Reno v. Reno Police Protective Ass’n*, 98 Nev.
7 472, 475, 653 P.2d 156, 158 (1982) (allowances provided by the general laws of the state may
8 not, absent a special dispensation of the legislature, be prohibited by local ordinances). These
9 local governments under the color of state law are permitted to act as defacto pimps who get
10 their cut of what prostituted women charge interstate and foreign travelers who come to Nevada
11 brothels to engage in prostitution.¹¹ Meanwhile, local governments with populations of more
12 than 700,000 who are prohibited from legalizing prostitution in licensed brothels, like Las Vegas,
13 aggressively promote prostitution as a means to encourage tourism to Nevada.¹² Las Vegas is
14 estimated to bring in over five billion dollars (\$5,000,000,000) per year from interstate and
15 foreign travelers who come to Nevada to engage in prostitution. Further, last year in recognition
16 of the tourism dollars brought to the State by prostitution, the 2018 Nevada Day Celebration
17 titled “A State of Economic Diversity” showcased “legal prostitution” as a party of the
18 “extremely diverse economic makeup” of Nevada’s economy. ¹³

20 ¹⁰Farley, *supra* at page 3, ¶2-3; In 2005, a study focused on 11 European Union countries
21 requested by the European Parliament's committee on Women's Rights and Gender Equality and
performed by Transcrime found that stricter prostitution laws seem to produce fewer human
trafficking victims.

22 ¹¹ *See Exhibit 9 at 0280-0282 (Lyon County Annual Budget at pages 13, 32); See also Exhibit*
10 *at 0283-0285 (Nye County Annual Budget 14, 110).*

23 ¹² *See Exhibit 11 at 0286-0309 (Articles on Branding and Marketing Efforts of Las Vegas for*
“Sin City”); *see also Exhibit 12 at 0310-0476 (Kateri M. Grillot, WHAT HAPPENED IN VEGAS?:*
24 *THE USE OF DESTINATION BRANDING TO INFLUENCE PLACE ATTACHMENTS (2007); see also*
Exhibit 13 at 0477-0478 (Sin City Chamber of Commerce references).

¹³ *See Exhibit 14 at 0479-0480 (Nevada Day 2018 Website).*

1 Moreover, Nevada government officials and leaders within the political subdivisions of
2 Nevada openly embrace and encourage individuals into interstate and foreign commercial travel
3 to engage in prostitution. State lawmakers will often capitalize on Nevada’s notoriety for
4 encouraging people to come to Nevada to engage in prostitution in order to legalize and
5 encourage the legalization of other federally prohibited commercial activities.¹⁴

6 Nevada’s actions and inactions unavoidably conflict with the federal law and policy
7 established to prevent the exact harms that Plaintiffs assert. The federal government explicitly
8 criminalizes prostitution. The Mann Act, now codified as U.S.C. 18 § 2422(a) (2018),
9 specifically provides “[w]hoever knowingly persuades, induces, entices, or coerces any
10 individual to travel in interstate or foreign commerce ... **to engage in prostitution**, or in any
11 sexual activity for which any person can be charged with a criminal offense, or attempts to do
12 so, shall be fined under this title or imprisoned not more than 20 years, or both.” (emphasis
13 added) Further, C.F.R 22 § 40.24(b) (2018) sets forth the meaning of Prostitution as “engaging
14 in promiscuous sexual intercourse for hire.” It is facially clear this statute is designed specifically
15 to combat prostitution and human trafficking for the purposes of prostitution.

16 Even if Nevada was “agnostic” with regard to legalized prostitution and the dicta cited
17 in support of that statement were accepted as true, it is non-sequitur to this cause of action. The
18 injuries sustained by Plaintiffs arise out of both Nevada’s misfeasance and nonfeasance.

20 ¹⁴ See Exhibit 15 at 0481-0493 (Minutes from Assembly Committee on Government Affairs,
21 May, 12, 2017 at page 12; Exhibit E PowerPoint presentation by Senator Segerblom);
22 (Legislator stated in support of his efforts to create lawful places for tourists to use marijuana
23 publicly, “Nevada is known for its legal vices and pleasure, which is why many people come
24 here. We allow some things other states do not, things everyone may not condone but are
nonetheless going on within a couple of miles of this building,” and again, “To those of you who
are worried about Nevada’s reputation, Nevada has a history of endorsing exotic activities
[page 3, (Exhibit E)]. About five miles over the hill in Mound House are brothels, so the idea
that we might think a marijuana social club would be inappropriate for Nevada does not seem
realistic.”). See also Exhibit 16 at 0494-0498 (Campaign Contribution Reports from Brothels
and Brothel Owners to State Officials).

1 Misfeasance exists when the defendant is responsible for making the plaintiff's position worse,
2 i.e., defendant has created a risk. Conversely, nonfeasance is found when the defendant has failed
3 to aid plaintiff through beneficial intervention. *Weitrum v. RKO Gen., Inc.*, 15 Cal. 3d 40, 49,
4 539 P.2d 36, 41 (1975). Federal law explicitly criminalizes all commercial travel in interstate
5 and foreign commerce to engage in prostitution. Men and women would not travel to Nevada
6 to engage in prostitution in violation of federal law but for Nevada's legal system that creates a
7 perceived safe haven for those seeking to purchase women for sexual intercourse. The Mann
8 Act applies each and every time a person enters into Nevada to engage in prostitution and/or is
9 induced, persuaded, to enter the State of Nevada to engage in prostitution. Nevada's system
10 of legalization cannot co-exist with the federal law so long as individuals are encouraged to travel
11 to Nevada through interstate and foreign commerce. The mere existence of the legal system in
12 Nevada encourages this conflict with federal law because it is the only state in the country that
13 permits prostitution in brothels.

14 **D. 11TH AMENDMENT IMMUNITY DOES NOT APPLY.**

15 The Eleventh Amendment immunizes states, an arm of the state, its instrumentalities, or
16 its agencies from suits brought in federal courts. *Pennhurst State Sch. & Hosp. v. Halderman*,
17 465 U.S. 89, 100, 104 S.Ct. 900, 79 L.Ed.2d 67 (1984); *Franceschi v. Schwartz*, 57 F.3d 828,
18 831 (9th Cir. 1995). There are three exceptions to this rule: (1) "Congress may abrogate that
19 immunity pursuant to its lawmaking powers"; (2) "a state may waive its Eleventh Amendment
20 immunity by consenting to suit"; and (3) "immunity does not apply when the plaintiff" sues a
21 state official in his or her official capacity for prospective injunctive relief. *Steshenko v. Gaynard*,
22 70 F.Supp.3d 979, 988–89 (N.D. Cal. 2014); *see Ex Parte Young*, 209 U.S. 123, 166, 28 S.Ct.
23 441, 52 L.Ed. 714 (1908); *Doe v. Lawrence Livermore Nat'l Lab.*, 131 F.3d 836, 839 (9th Cir.
24 1997). Moreover, the Eleventh Amendment limits claims brought under § 1983. *Lawrence*

1 *Livermore Nat'l Lab.*, 131 F.3d at 836,839 (9th Circ. 1997).

2 Under the *Ex parte Young* doctrine, immunity does not apply when Plaintiffs choose to
3 sue a state official in his or her official capacity for prospective injunctive relief. *Steshenko v.*
4 *Gayrard*, 44 F.Supp.3d 941, 949 (N.D.Cal., 2014) (*quoting Seminole Tribe of Fla. v.*
5 *Florida*, 517 U.S. 44, 73, 116 S.Ct. 1114, 134 L.Ed.2d 252 (1996)). The Eleventh Amendment
6 confirms that “the fundamental principle of sovereign immunity limits the grant of judicial
7 authority in Art. III.” *Green v. Mansour*, 106 S.Ct. 423, 425–26, 474 U.S. 64, 68
8 (U.S.Mich.,1985) (*quoting Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89, 98,
9 104 S.Ct. 900, 906, 79 L.Ed.2d 67 (1984)). Because of the Eleventh Amendment, states may not
10 be sued in federal court unless they consent to it in unequivocal terms or unless Congress,
11 pursuant to a valid exercise of power, unequivocally expresses its intent to abrogate the
12 immunity. *Id.*, at 99, 104 S.Ct., at 907. The landmark case of *Ex parte Young*, 209 U.S. 123, 28
13 S.Ct. 441, 52 L.Ed. 714 (1908), created an exception to this general principle by asserting that a
14 suit challenging the constitutionality of a state official's action in enforcing state law is not one
15 against the State. *Id.*, at 159–160, 28 S.Ct., at 453–54. The theory of *Young* was that an
16 unconstitutional statute is void, *id.*, at 159, 28 S.Ct., at 453–54, and therefore does not “impart
17 to [the official] any immunity from responsibility to the supreme authority of the United States.”
18 *Id.*, at 160, 28 S.Ct., at 454. *Young* also held that the Eleventh Amendment does not prevent
19 federal courts from granting prospective injunctive relief to prevent a continuing violation of
20 federal law. *Id.* at 155–156, 159, 28 S.Ct., at 452–53.

21 Here, the Defendants are not entitled to immunity because Plaintiffs are seeking
22 prospective injunctive relief by requesting that this Court enter a preliminary and permanent
23 injunction prohibiting the State of Nevada and all of its political subdivisions from
24 implementing, enforcing, or putting into force and effect Nev. Rev. Stat. 201.354(1) and Nev.

1 Rev. Stat. 244.345(8).

2 **III. PLAINTIFFS' FIRST AMENDED COMPLAINT CONTAINS SUFFICIENT**
3 **FACTS THAT, ACCEPTED AS TRUE, STATE A CLAIM TO RELIEF.**

4 A court may dismiss a complaint under Rule 12(b)(6) for lack of a cognizable legal theory
5 or insufficient facts pleaded to support an otherwise cognizable legal theory. *Balistreri v.*
6 *Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988). To survive a dismissal motion, a
7 complaint need only satisfy the minimal notice pleading requirements of Rule 8(a)(2)—a short
8 and plain statement of the claim. *Porter v. Jones*, 319 F.3d 483, 494 (9th Cir. 2003). The factual
9 “allegations must be enough to raise a right to relief above the speculative level.” *Bell Atl. Corp.*
10 *v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007). That is, the complaint
11 must “contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible
12 on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009)
13 (internal quotation marks omitted). The determination of whether a complaint satisfies the
14 plausibility standard is a “context-specific task that requires the reviewing court to draw on its
15 judicial experience and common sense.” *Id.* at 679, 129 S.Ct. 1937. A court is generally limited
16 to the pleadings and must construe all “factual allegations set forth in the complaint ... as true
17 and ... in the light most favorable” to the plaintiff. *Lee v. City of Los Angeles*, 250 F.3d 668, 679
18 (9th Cir. 2001). A court should ask, “not whether a plaintiff will ultimately prevail but whether
19 the claimant is entitled to offer evidence to support the claims.” *Bell Atlantic v. Twombly*, 127
20 S.Ct. 1955, 1969 n.8 (2007) (quoting *Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 S.Ct. 1683
21 (1974)). On motion to dismiss for failure to state a claim, the Court must presume all factual
22 allegations of complaint to be true and draw all reasonable inferences in favor of nonmoving
23 party. *Usher v. City of Los Angeles*, 828 F.2d 556 (9th Cir. 1987).

23 **A. PRE-EMPTION AND THE SUPREMACY CLAUSE.**

24 The preemption doctrine stems from the Supremacy Clause of the United States

1 Constitution, which provides:

2 This Constitution, and the Laws of the United States which shall be
3 made in pursuance thereof; and all Treaties made, or which shall be
4 made, under the authority of the United States, shall be the supreme
5 Law of the Land; and the judges in every state shall be bound
6 thereby, any Thing in the Constitution or laws of any State to the
7 contrary notwithstanding.

8 U.S. Const. art. VI, cl. 2.

9 This means that when federal and state law conflict, federal law prevails and state law is
10 preempted. *Murphy v. Nat’l Collegiate Athletic Ass’n*, 138 S.Ct. 1461, 1476 (2018). Therefore,
11 “state laws that conflict with federal law[s] are without effect.” *Altria Grp., Inc. v. Good*, 555
12 U.S. 70, 76, 129 S.Ct. 538, 172 L.Ed.2d 398 (2008) (internal quotations omitted). Conflicts
13 between federal and state law are resolved in favor of federal law. *See McCulloch v. Maryland*,
14 17 U.S. (4 Wheat.) 316, 427 (1819); *Cipollone v. Liggett Group*, 505 U.S. 504, 516 (1992).

15 Preemption can be express or implied. Preemption is “express” if a federal statute
16 explicitly addresses the domain of state law that is or is not preempted, and it is implied if the
17 structure and purpose of federal law, but not its actual words, preempt state law. *See Cipollone*,
18 505 U.S. at 516. The implied preemption doctrine is itself divided into two types: field
19 preemption and conflict preemption. Field preemption applies where a state law seeks to
20 “regulate conduct in a field that Congress intended the Federal Government to occupy
21 exclusively.” *English v. General Elec. Co.*, 496 U.S. 72, 79 (1990). “[U]nder field preemption,
22 preemption is implied when congressional enactments so thoroughly occupy a legislative field,
23 or touch a field in which the federal interest is so dominant, that Congress effectively leaves no
24 room for states to regulate conduct in that field.” *Id.* Conflict preemption applies when a direct
25 conflict exists between federal and state law. *Boyle v. United Techs. Corp.*, 487 U.S. 500, 504,
26 108 S.Ct. 2510, 101 L.Ed.2d 442 (1988). Conflict preemption is further subdivided into two
27 types, one based on the impossibility of complying with both federal and state law and the other

1 based on the notion that the state law frustrates the purposes of the federal law.

2 “[T]he purpose of Congress is the ultimate touchstone in every pre-emption case.” *Wyeth*
3 *v. Levine*, 555 U.S. 555, 565, 129 S.Ct. 1187, 173 L.Ed.2d 51 (2009) (quoting *Medtronic, Inc. v.*
4 *Lohr*, 518 U.S. 470, 485, 116 S.Ct. 2240, 135 L.Ed.2d 700 (1996)). In determining congressional
5 intent, the Court must first consider whether Congress made its intent to preempt state law clear
6 through express language in a statute. *Oneok, Inc. v. Learjet, Inc.*, 135 S.Ct. 1591, 1595(2015).
7 Even when a statute does not expressly refer to preemption, Congress may implicitly preempt
8 state legislation through either field preemption or conflict preemption. *Id.*

9 Sex trafficking, as defined by the Trafficking Victims Protection Act, includes all
10 pimping and sex buying. Nevada’s creation of an intrastate commercialized prostitution market
11 exerts a substantial economic effect, namely, the creation of an interstate and foreign prostitution
12 market; therefore, Nevada’s legal brothels, operating under Nev. Rev. Stat. 201.354(1) and Nev.
13 Rev. Stat. 244.345(8), are in violation of and direct conflict with 42 U.S.C. § 1983; the federal
14 the “Mann Act” (codified at 18 U.S.C. §§ 2421–2424) and the “Victims of Trafficking and
15 Violence Protection Act of 2000”, codified at 22 U.S.C. §§ 7101–7114 (TVPA).

16 On June 25, 1910, the 61st United States Congress passed H.R. 12315, also known as the
17 “Mann Act” (the “Act”) (codified as 18 U.S.C. § 2422(a) (2018)), which criminalized the
18 interstate or foreign commerce transport “of any woman or girl for prostitution, debauchery, or
19 for any other immoral purpose.” The primary intent was to combat prostitution, immorality, and
20 human trafficking for the purposes of prostitution in the United States.

21 The Mann Act has since been amended, extending coverage from “any woman or girl”
22 to “any individual,” deleting the terms “debauchery” and “other immoral purpose,” criminalizing
23 coercion and enticement to “travel in interstate or foreign commerce ... to engage in
24 prostitution,” and removing the requirement for transport on an interstate common carrier. The

1 intent of the Act, specifically to combat prostitution and human trafficking for the purposes of
2 prostitution, remained unchanged. The current statute specifically provides:

3 Whoever knowingly persuades, induces, entices, or coerces any
4 individual to travel in interstate or foreign commerce, or in any Territory
5 or Possession of the United States, to engage in prostitution, or in any
6 sexual activity for which any person can be charged with a criminal
7 offense, or attempts to do so, shall be fined under this title or imprisoned
8 not more than 20 years, or both.

9 18 U.S.C. § 2422(a) (2018).

10 On October 28, 2000, the 106th Congress passed H.R. 3244, also known as the “Victims
11 of Trafficking and Violence Protection Act of 2000” (the “TVPA”) (codified as 22 U.S.C. §
12 7101-7114 (2018)), which criminalized human trafficking and related offenses as federal crimes
13 with severe penalties attached and established several methods to prosecute traffickers. The
14 purpose of this to legislation is to address trafficking in persons. The law provides a three-
15 pronged approach that includes prevention, protection, and prosecution. The issue of trafficking
16 in persons included those trafficked into the commercial sex industry, modern day slavery, and
17 forced labor. Contrary to Nevada and Sisolak’s inaccurate assertions, the Congressional intent
18 of the federal law as expressed through the enactment of 18 U.S.C. 2422(a) is clear, certain, and
19 unambiguous, *to wit*, to prevent persons from persuading, inducing, enticing, and/or coercing
20 any person to travel across state lines to engage in prostitution.

21 **B. NEVADA LAW IS PREEMPTED BY FEDERAL LAW.**

22 Plaintiffs assert in their First Amended Complaint that the Nev. Rev. Stat. 201.354(1)
23 and Nev. Rev. Stat. 244.345(8) are invalid under two theories of preemption: (1) field preemption
24 based on The Mann Act” (the “Act”) (codified as 18 U.S.C. § 2422(a) (2018), which its intent is
clear to prevent persons from persuading, inducing, enticing, and/or coercing any person to travel
across state lines to engage in prostitution and also Victims of Trafficking and Violence
Protection Act of 2000” (the “TVPA”) (codified as 22 U.S.C. § 7101-7114) which criminalized

1 human trafficking and related offenses as federal crimes with severe penalties attached and
2 established several methods to prosecute traffickers; and (2) conflict preemption as to two federal
3 laws, The Mann Act and the TVPA. In Plaintiffs' First Amended Complaint, Plaintiffs
4 sufficiently allege a claim for field and conflict preemption.

5 **1. FIELD PREEMPTION**

6 Field preemption occurs when states are precluded from regulating conduct in a field that
7 Congress "has determined must be regulated by its exclusive governance." *Valle del Sol Inc. v.*
8 *Whiting*, 732 F.3d 1006, 1022 (9th Cir. 2013). Field preemption can be inferred from a regulation
9 that is "so pervasive ... that Congress left no room for the [s]tates to supplement it or where there
10 is a federal interest ... so dominant that the federal system will be assumed to preclude
11 enforcement of state laws on the same subject." *Id.* at 1022–23 (internal quotation marks
12 omitted). Congress, through the Mann Act and the TVPA, intended to occupy the entire field of
13 prostitution and sex trafficking, thus leaving no room for the Nev. Rev. Stat. 201.354(1) and
14 Nev. Rev. Stat. 244.345(8). The Mann Act does not expressly refer to preemption, however it
15 should be inferred that the Congressional intent in enacting the Mann Act was to preempt state
16 laws from the substantive provisions of the legislation. Accordingly, "even when a statute does
17 not expressly refer to preemption, Congress may implicitly preempt state legislation through
18 either field preemption or conflict preemption." *Knox v. Brnovich*, 907 F.3d 1167 (C.A.9 (Ariz.),
19 2018).

20 **2. CONFLICT PREEMPTION**

21 Conflict preemption occurs when state law conflicts with a federal statute. *Crosby v.*
22 *Nat'l Foreign Trade Council*, 530 U.S. 363, 373, 120 S.Ct. 2288, 147 L.Ed.2d 352 (2000).
23 Conflict preemption has two forms: impossibility and obstacle preemption. *Id.* at 372, 120 S.Ct.
24 2288. Impossibility preemption occurs where "it is impossible for a private party to comply with

1 both state and federal law.” *Id.* Obstacle preemption occurs “where under the circumstances of
2 a particular case, the challenged state law stands as an obstacle to the accomplishment and
3 execution of the full purposes and objectives of Congress. *Id.* at 373, 120 S.Ct. 2288 (internal
4 quotation marks and alterations omitted). Both forms of conflicting state law are “nullified” by
5 the Supremacy Clause. *Geier v. Am. Honda Motor Co.*, 529 U.S. 861, 873, 120 S. Ct. 1913,
6 1921, 146 L. Ed. 2d 914 (2000) (*citing* *Fid. Fed. Sav. & Loan Ass’n v. de la Cuesta*, 458 U.S.
7 141, 102 S. Ct. 3014, 73 L. Ed. 2d 664 (1982), *United States v. Locke*, 529 U.S. 89, 120 S. Ct.
8 1135, 146 L. Ed. 2d 69 (2000); *English v. General Elec. Co.*, 496 U.S. 72, 78–79, 110 S.Ct.
9 2270, 110 L.Ed.2d 65 (1990).

10 Plaintiffs’ First Amended Complaint, as plead, sets forth sufficient facts to facially
11 establish and make evident that Nevada’s laws permitting counties to license brothels is in direct
12 conflict with the objectives of the Mann Act to prevent commercial prostitution and sex
13 trafficking through interstate and foreign commerce. As an obstacle to the full purposes and
14 objectives of Congress, Nev. Rev. Stat. 201.354(1), Nev. Rev. Stat. 244.345(8), and the brothel
15 licensing ordinances of Elko, Lander, Lyon, Mineral, Nye, Storey, and White Pine Counties
16 obstruct the accomplishment of Congress’ purposes and objectives of the Mann Act and are
17 therefore preempted.

18 **IV. CONCLUSION**

19 For the reasons stated above, this Court should deny Defendants State of Nevada and
20 Governor Steve Sisolak’s Motion to Dismiss Plaintiffs’ First Amended Complaint.

21 DATED this 21st day of May, 2019. HUTCHISON & STEFFEN, PLLC

22 By: /s/ Jason D. Guinasso
23 JASON D. GUINASSO, ESQ. (SBN# 8478)
24 Attorney for Plaintiffs

1 **CERTIFICATE OF SERVICE**

2 Pursuant to FRCP 5(b), I certify that I am an employee of Hutchison & Steffen, PLLC,
3 over the age of 21 years, and not a party to nor interested in the within action. I certify that on
4 this date, the foregoing was electronically filed with the United States District Court. Electronic
5 service of the foregoing document shall be made in accordance with the Master Service List as
6 follows:

7 Gregory Louis Zunino GZunino@ag.nv.gov, sgeyer@ag.nv.gov
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11 Dated this May 21, 2019.

12 /s/ A. Otutaha
13 Employee of Hutchison & Steffen, PLLC
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List of Exhibits

**APPENDIX OF EXHIBITS TO PLAINTIFFS' OPPOSITION TO DEFENDANTS
STATE OF NEVADA AND GOVERNOR STEVE SISOLAK'S MOTION TO DISMISS
FIRST AMENDED COMPLAINT (ECF No. 22)**

Description	Volume Number	Bates Range
EXHIBIT 1- RONALD B. FLOWERS, PROSTITUTION IN THE DIGITAL AGE: SELLING SEX FROM THE SUITE TO THE STREET? at pg. 42-46 (Praeger 2011)	I	0001-0006
Exhibit 2- Crysta N. Price, Terry D. Clark, & Julie Faller, Nevada's Online Commercial Sex Market, HUMAN TRAFFICKING INITIATIVE, CREIGHTON UNIVERSITY (2017), https://awakenreno.org/wp-content/uploads/2018/05/FINAL_Nevada_March2018.pdf	I	0007-0029
Exhibit 3- Seo-Young Cho, Axel Dreher, & Eric Neumeyer, Does Legalized Prostitution Increase Human Trafficking?, WORLD DEVELOPMENT, at pg. 41, 67-82 (2012), https://eprints.lse.ac.uk/45198/1/Neumayer_Legalized_Prostitution_Increase_2012.pdf	I	0030-0078
Exhibit 4- Melissa Farley, Trafficking for Prostitution: Making the Connections, AMERICAN PSYCHOLOGICAL ASSOCIATION (2007)	I	0079-0086
Exhibit 5- Shapiro & Hughes, Decriminalized Prostitution: Impunity for Violence and Exploitation, UNIVERSITY OF RHODE ISLAND (2017)	I	0087-0116
Exhibit 6- Research Report, Who Buys Sex? Understanding and Disrupting Illicit Market Demand, Demand Abolition (Nov., 2018)	I	0117-0169
Exhibit 7- U.S. DEPARTMENT OF STATE, TRAFFICKING IN PERSONS REPORT at pg. 27 (2007)	I	0170-0171
Exhibit 8- Examples Of Advertising And Marketing Of Brothels	II	0172-0279
Exhibit 9- Lyon County Annual Budget	II	0280-0282
Exhibit 10- Nye County Annual Budget	II	0283-0285
Exhibit 11- Articles on Branding and Marketing Efforts of Las Vegas for "Sin City"	II	0286-0309
Exhibit 12- Kateri M. Grillot, WHAT HAPPENED IN VEGAS?: THE USE OF DESTINATION BRANDING TO INFLUENCE PLACE ATTACHMENTS (2007)	III	0310-0476
Exhibit 13- Sin City Chamber of Commerce references	III	0477-0478
Exhibit 14- Nevada Day 2018 Website	III	0479-0480
Exhibit 15- Minutes from Assembly Committee on Government Affairs, May, 12, 2017 at page 12; Exhibit E PowerPoint presentation by Senator Segerblom	III	0481-0493
Exhibit 16- Campaign Contribution Reports from Brothels and Brothel Owners to State Officials	III	0494-0498